



CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

May 11, 2004

H.R. 2731 **Occupational Safety and Health Small Business** **Day in Court Act of 2004**

*As ordered reported by the House Committee on Education and the Workforce
on May 5, 2004*

SUMMARY

H.R. 2731 would amend the Occupational Safety and Health Act to permit small employers with 100 or fewer employees and net worth of not more than \$7 million to be awarded attorney fees and expenses if they prevail against the Occupational Safety and Health Agency (OSHA) in administrative or court proceedings.

CBO estimates that implementing H.R. 2731 would cost \$7 million in 2005 and \$44 million over the 2005-2009 period, subject to the availability of appropriated funds. H.R. 2731 would not affect direct spending or revenues.

H.R. 2731 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 2731 is shown in the following table. The costs of this legislation fall within budget function 550 (health).

	By Fiscal Year, in Millions of Dollars					
	2004	2005	2006	2007	2008	2009
SPENDING SUBJECT TO APPROPRIATION						
OSHA Spending Under Current Law						
Estimated Authorization Level ^a	458	469	479	492	507	522
Estimated Outlays	468	471	473	485	500	515
Proposed Changes						
Estimated Authorization Level	0	8	9	9	10	10
Estimated Outlays	0	7	8	9	9	10
OSHA Spending Under H.R. 2731						
Estimated Authorization Level	458	477	488	501	517	532
Estimated Outlays	468	478	481	494	509	525

Note: Components may not sum to totals because of rounding.

a. The 2004 level is the amount appropriated for that year for the Occupational Safety and Health Agency. The amounts for 2005 through 2009 are baseline projections that assume annual increases for anticipated inflation.

BASIS OF ESTIMATE

For this estimate, CBO assumes that the bill will be enacted in the fall of 2004, that the estimated amounts will be appropriated for each year, and that outlays will follow historical spending patterns for similar activities authorized under the Equal Access to Justice Act (EAJA).

H.R. 2731 would amend the Occupational Safety and Health Act to allow employers with 100 or fewer employees and less than \$7 million in net worth to be awarded reasonable attorney fees and expenses if they prevail in an adversarial adjudication or a court proceeding in which they contest a citation made by OSHA. Under the EAJA, the payment of fees and expenses would be made from the agency's discretionary appropriations. CBO estimates that implementing H.R. 2731 would cost \$7 million in 2005 and \$44 million over the 2005-2009, subject to the availability of appropriated funds.

Currently under the EAJA, a prevailing party with fewer than 500 employees and less than \$7 million in net worth may recover their legal expenses, but only when it is found that the action brought by the United States is not substantially justified or when special circumstances would make an award unjust. In practice, OSHA actions (that is, citations pursuant to the Occupational Safety and Health Act) have nearly always met those standards. (Only a handful of employers with 100 or fewer employees were awarded fees and expenses after prevailing against OSHA in 2003.) Regardless of whether OSHA's actions were substantially justified or the award unjust, OSHA would be required, under H.R. 2731, to pay fees and expenses of small employers who prevail in administrative or court proceedings.

According to data from the agency, OSHA issued citations in about 28,000 cases in 2003 across all employer groups. Employers with fewer than 101 employees accounted for about 70 percent of this caseload. (Most small employers cited by OSHA are construction-related firms.) Only about 7 percent of the citations made to small firms are contested, or about 1,400 cases per year. Of these contested cases, CBO estimates that about 400 would involve either adjudication in an administrative proceeding or judicial review, based on the percentage of all contested cases that reached these levels over the past two years.

In addition, CBO assumes that small employers would prevail against OSHA on at least one count in over half of the cases that reach the required administrative or judicial level. This assumption is based on the historical rate at which all employers prevail when they contest OSHA citations. Finally, CBO assumes OSHA would reimburse small employers \$36,000 in legal costs, on average, when they prevail in overturning OSHA actions. This assumption is based on a recent survey of OSHA awards to small employers in 2003. CBO assumed the average award under H.R. 2731 would be 50 percent higher than under current law because reductions for substantial justification would be removed.

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

H.R. 2731 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

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